

UNITED STATES MAGISTRATE JUDGE

United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

MEMO ENDORSED

Re: 15-cv-00495 "Modesto v. Figueroa et.al."

Dear Judge Fox,

I am the *pro se* plaintiff in the above case.

Not for purposes of delay, I have timely filed on August 13, 2015, a second motion for extension of time to file opposition to defendants motion to dismiss, filed by, namely the 32 BJ Union collective defendants and the First Quality Maintenance (FQM) defendants.

Plaintiff worked on documents necessary to file against defendants Securitas employees William Dunn, James Griffin, Frank Anello, Eddie Maldonado, Brenda Johnson and Gloria Ran, collectively known as Securitas defendants, whom plaintiff believes to be in default. On August 13, 2015, the Clerk of Court refused to issue a default judgment.

Absent an order from the court to answer a motion to dismiss filed out of time, plaintiff could not file a motion for extension of time against the motion to dismiss filed by defendants out of time. (pls. see dkt 50-53).

Defendants validly received a copy of the summons and complaint on April 28, 2015 through Gloria HR manager, at the Securitas offices at 1412 Broadway, New York NY 10018. The return of service was noted on May 11 and 12, 2015. Answer was due on May 19, 2015. Defendants nor counsel did not move in this case, since counsel belatedly entered his appearance only on May 29, 2015.

Defendants are clearly in default.

Plaintiff requests the Honorable court to declare Securitas defendants in default under Rule 55 of the Federal Rules on Civil Procedure, and issue the default judgment accordingly.

Thank you.

Respectfully,

Ramon Modesto
Ramon Modesto
Pro Se Plaintiff

9/8/15
Application denied. The entry of a party's default is within the province of the Clerk of Court. See Rule 55(a) of the Federal Rules of Civil Procedure. A request for judgment by default, prior to the action of the Clerk of Court, pursuant to Fed. R. Civ. P. 55(a), is premature.

SO ORDERED:
Kevin Nathaniel Fox
KEVIN NATHANIEL FOX, U.S. M. J.

